

cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) Presumptive evidence

The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a)(1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

(Oct. 19, 1949, ch. 699, § 2, 63 Stat. 884; Aug. 15, 1953, ch. 512, title II, § 201(a), 67 Stat. 617; Aug. 9, 1955, ch. 695, § 1, 69 Stat. 627.)

AMENDMENTS

1955—Act Aug. 9, 1955, designated existing provisions as subsec. (a), inserted provisions requiring filing of a statement of name, trade name, address, and places of business by persons who sell or transfer for profit cigarettes in interstate commerce or by persons who advertise or offer cigarettes for such sale or transfer, and added subsec. (b).

1953—Act Aug. 15, 1953, required that the memorandum or copy of invoice be filed with, rather than forwarded to, the tobacco tax administrator.

EFFECTIVE DATE OF 1955 AMENDMENT

For effective date of amendment by act Aug. 9, 1955, see section 2 of act Aug. 9, 1955, set out as a note under section 375 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 201(b) of act Aug. 15, 1953, provided that: "The amendment made by subsection (a) [amending this section] shall apply only in respect of memoranda or copies of invoices covering shipments made during the calendar month in which this Act is enacted [August 1953] and subsequent calendar months."

§ 377. Penalties

Whoever violates any provision of this chapter shall be guilty of a misdemeanor and shall be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

(Oct. 19, 1949, ch. 699, § 3, 63 Stat. 885; Aug. 9, 1955, ch. 695, § 1, 69 Stat. 628.)

AMENDMENTS

1955—Act Aug. 9, 1955, substituted "any provision of this chapter" for "the provisions of this chapter".

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective 30 days after Aug. 9, 1955, see section 2 of act Aug. 9, 1955, set out as a note under section 375 of this title.

§ 378. Jurisdiction to prevent and restrain violations

The United States district courts shall have jurisdiction to prevent and restrain violations of this chapter.

(Oct. 19, 1949, ch. 699, § 4, as added Aug. 9, 1955, ch. 695, § 1, 69 Stat. 628.)

EFFECTIVE DATE

Section effective 30 days after Aug. 9, 1955, see section 2 of act Aug. 9, 1955, set out as a note under section 375 of this title.

CHAPTER 10B—STATE TAXATION OF INCOME FROM INTERSTATE COMMERCE

SUBCHAPTER I—NET INCOME TAXES

Sec.

- 381. Imposition of net income tax.
 - (a) Minimum standards.
 - (b) Domestic corporations; persons domiciled in or residents of a State.
 - (c) Sales or solicitation of orders for sales by independent contractors.
 - (d) Definitions.
- 382. Assessment of net income taxes.
 - (a) Limitations.
 - (b) Collections.
- 383. "Net income tax" defined.
- 384. Separability.

SUBCHAPTER II—DISCRIMINATORY TAXES

- 391. Tax on or with respect to generation or transmission of electricity.

SUBCHAPTER I—NET INCOME TAXES

§ 381. Imposition of net income tax

(a) Minimum standards

No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

- (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
- (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(b) Domestic corporations; persons domiciled in or residents of a State

The provisions of subsection (a) of this section shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to—

- (1) any corporation which is incorporated under the laws of such State; or
- (2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.

(c) Sales or solicitation of orders for sales by independent contractors

For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of mak-

ing sales, or soliciting orders for sales, or tangible personal property.

(d) Definitions

For purposes of this section—

(1) the term “independent contractor” means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of, tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities; and

(2) the term “representative” does not include an independent contractor.

(Pub. L. 86-272, title I, §101, Sept. 14, 1959, 73 Stat. 555.)

STUDY AND REPORT BY CONGRESSIONAL COMMITTEES OF STATE TAXATION FROM INTERSTATE COMMERCE

Title II of Pub. L. 86-272, as amended by Pub. L. 87-17, Apr. 7, 1961, 75 Stat. 41; Pub. L. 87-435, Apr. 21, 1962, 76 Stat. 55; Pub. L. 88-42, June 21, 1963, 77 Stat. 67; Pub. L. 88-286, Mar. 18, 1964, 78 Stat. 166, and repealed by Pub. L. 94-455, title XXI, §2121(a), Oct. 4, 1976, 90 Stat. 1914, provided for a study by the Committee on the Judiciary of the House of Representatives and the Committee on Finance of the United States Senate, acting separately or jointly, or any duly authorized subcommittee thereof, of all matters pertaining to the taxation of interstate commerce by the States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any political or taxing subdivision of the foregoing, and for a report together with their proposals for legislation on or before June 30, 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 382 of this title.

§ 382. Assessment of net income taxes

(a) Limitations

No State, or political subdivision thereof, shall have power to assess, after September 14, 1959, any net income tax which was imposed by such State or political subdivision, as the case may be, for any taxable year ending on or before such date, on the income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after such date is prohibited by section 381 of this title.

(b) Collections

The provisions of subsection (a) of this section shall not be construed—

(1) to invalidate the collection, on or before September 14, 1959, of any net income tax imposed for a taxable year ending on or before such date, or

(2) to prohibit the collection, after September 14, 1959, of any net income tax which was assessed on or before such date for a taxable year ending on or before such date.

(Pub. L. 86-272, title I, §102, Sept. 14, 1959, 73 Stat. 556.)

§ 383. “Net income tax” defined

For purposes of this chapter, the term “net income tax” means any tax imposed on, or measured by, net income.

(Pub. L. 86-272, title I, §103, Sept. 14, 1959, 73 Stat. 556.)

§ 384. Separability

If any provision of this chapter or the application of such provision to any person or circumstance is held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 86-272, title I, §104, Sept. 14, 1959, 73 Stat. 556.)

SUBCHAPTER II—DISCRIMINATORY TAXES

§ 391. Tax on or with respect to generation or transmission of electricity

No State, or political subdivision thereof, may impose or assess a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-State manufacturers, producers, wholesalers, retailers, or consumers of that electricity. For purposes of this section a tax is discriminatory if it results, either directly or indirectly, in a greater tax burden on electricity which is generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce.

(Pub. L. 86-272, title II, §201, as added Pub. L. 94-455, title XXI, §2121(a), Oct. 4, 1976, 90 Stat. 1914.)

EFFECTIVE DATE

Section 2121(b) of Pub. L. 94-455 provided that: “The amendment made by subsection (a) [enacting this section] shall take effect beginning June 30, 1974.”

CHAPTER 11—CAUSTIC POISONS

§§ 401 to 411. Repealed. Pub. L. 86-613, § 19, formerly § 18, July 12, 1960, 74 Stat. 381; renumbered Pub. L. 91-113, § 4(a), Nov. 6, 1969, 83 Stat. 189

Sections 401 to 411, act Mar. 4, 1927, ch. 489, §§1-10, 12, 44 Stat. 1406-1410, prohibited misbranded shipments of dangerous caustic or corrosive substances in interstate or foreign commerce. See chapter 30 [§1261 et seq.] of this title.

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Pub. L. 86-613, § 19, formerly § 18, July 12, 1960, 74 Stat. 381, renumbered and amended by Pub. L. 91-113, § 4(a), (b)(2), Nov. 6, 1969, 83 Stat. 189, 190, provided that: “The Federal Caustic Poison Act [sections 401 to 411 of this title] (44 Stat. 1406) is repealed effective at the close of the sixth calendar month after the month of enactment of this Act [July 12, 1960], except that the Federal Caustic Poison Act shall remain in full force and effect with respect to any ‘dangerous caustic or corrosive substance’ (as defined by that Act) which is an article subject to the Federal Food, Drug, and Cosmetic Act [chapter 9 of title 21] and which is, by virtue of paragraph 2 of section 2(f) of this Act [section 1261(f)(2) of this title] excluded from the term ‘hazardous substance’ as defined in this Act [chapter 30 of this title]: *Provided*, That, if the Secretary, pursuant to section 17(b) of this Act [set out as a note under section 1261 of this title], prescribes an additional period or periods during which violations of this Act [chapter 30 of this title] shall not be enforceable and if such additional period or periods are applicable to violations of this Act [chapter 30 of this title] involving one or more substances defined as ‘dangerous caustic or corrosive substances’ by the Federal Caustic Poison Act, that Act